

ASSEMBLY BILL

No. 1188

Introduced by Assembly Member Ruskin

February 27, 2009

An act to amend Sections 25173.6, 25187, 25390, 25390.1, 25390.3, and 25390.4 of, and to add Section 25244.25 to, the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 1188, as introduced, Ruskin. Hazardous materials: penalties: allocation.

(1) Existing law establishes the Toxic Substances Control Account in the General Fund and requires the Director of Toxic Substances Control to administer the account. Existing law authorizes the moneys in the account to be appropriated to the Department of Toxic Substances Control for various purposes, including for the administration of the Human and Ecological Risk Division, Hazardous Materials Laboratory, and Office of Pollution Prevention and Technology Development in the department.

This bill would additionally authorize the funds in the account to be appropriated to the department for the administration of the successor organizations of those units of the department, the implementation of programs administered by those units, and activities in the department related to pollution prevention and technology development.

(2) Existing law authorizes the department or a unified program agency to issue an administrative enforcement order requiring that a violation be corrected and imposing an administrative penalty for a violation of specified statutory provisions or a permit, rule, regulation, standard, or requirement issued or adopted pursuant to those provisions.

Existing law imposes requirements regarding the payment of administrative penalties collected from enforcement actions and requires the administrative penalties to be placed in a separate subaccount in the Toxic Substances Control Account for transfer to the Site Remediation Account or the Expedited Site Remediation Trust Fund and for expenditure by the department upon appropriation by the Legislature.

This bill would delete the requirement that the administrative penalties be placed in a separate subaccount in the account. If a specified requirement is met, the bill would additionally authorize, upon appropriation by the Legislature, (a) the transfer of those moneys to the Orphan Share Reimbursement Trust Fund, only for purposes of paying claims for reimbursement filed by project proponents, as defined, and to the Pollution Prevention Technology Assistance Grant Fund, which would be established by this bill, and (b) the expenditure by the department of those moneys for activities in the department related to pollution prevention and technology development.

(3) Existing law requires the department to establish a technical and research assistance program to assist generators of hazardous waste in identifying and applying methods of source reduction and other hazardous waste management approaches. Under existing law, that program is required to emphasize assistance to smaller businesses that have inadequate technical and financial resources for obtaining information, assessing source reduction methods, and developing and applying source reduction techniques. Existing law also requires the department to conduct an inventory and analysis of low-cost voluntary programs to reduce hazardous waste generation and other environmental releases of toxic chemicals and to develop recommendations for new programs, as specified.

This bill would establish the Pollution Prevention Technology Assistance Grant Fund in the State Treasury. The bill would authorize the department to expend the moneys in the fund, upon appropriation by the Legislature, to be used to pay for grants to assist small businesses in purchasing pollution prevention equipment and to pay the department's administrative costs in implementing the fund. The bill would authorize the department to adopt emergency regulations to implement the provisions relating to the fund.

(4) Existing law establishes the Orphan Share Reimbursement Trust Fund to, among other things, encourage responsible parties to quickly and efficiently remediate contamination by hazardous substances and authorizes the administrator of the fund to expend the moneys in the

fund, upon appropriation by the Legislature, to, among other things, pay a responsible party for a claim for reimbursement of the orphan share of a site, which is the share of liability for the costs of response action at the site that is attributable to the activities of persons who are defunct or insolvent.

Existing law defines various terms for purposes of administering the Orphan Share Reimbursement Trust Fund.

This bill would additionally define “project proponent” and “responsible party” for purposes of the fund and would authorize a project proponent to file a claim for reimbursement from that fund. The bill would also authorize the administrator of the fund to expend money in the fund to pay a project proponent for a claim for reimbursement of an orphan share at a site paid by that project proponent.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25173.6 of the Health and Safety Code
- 2 is amended to read:
- 3 25173.6. (a) There is in the General Fund the Toxic Substances
- 4 Control Account, which shall be administered by the director. In
- 5 addition to any other money that may be appropriated by the
- 6 Legislature to the Toxic Substances Control Account, all of the
- 7 following shall be deposited in the account:
- 8 (1) The fees collected pursuant to Section 25205.6.
- 9 (2) The fees collected pursuant to Section 25187.2, to the extent
- 10 that those fees are for oversight of a removal or remedial action
- 11 taken under Chapter 6.8 (commencing with Section 25300) or
- 12 Chapter 6.85 (commencing with Section 25396).
- 13 (3) Fines or penalties collected pursuant to this chapter, Chapter
- 14 6.8 (commencing with Section 25300) or Chapter 6.85
- 15 (commencing with Section 25396), except as directed otherwise
- 16 by Section 25192.
- 17 (4) Interest earned upon money deposited in the Toxic
- 18 Substances Control Account.
- 19 (5) All money recovered pursuant to Section 25360, except any
- 20 amount recovered on or before June 30, 2006, that was paid from
- 21 the Hazardous Substance Cleanup Fund.
- 22 (6) All money recovered pursuant to Section 25380.

(7) Reimbursements for funds expended from the Toxic Substances Control Account for services provided by the department, including, but not limited to, reimbursements required pursuant to Sections 25201.9 and 25343.

(8) Money received from the federal government pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(9) Money received from responsible parties for remedial action or removal at a specific site, except as otherwise provided by law.

(b) The funds deposited in the Toxic Substances Control Account may be appropriated to the department for the following purposes:

(1) The administration and implementation of the following:

(A) Chapter 6.8 (commencing with Section 25300), except that funds shall not be expended from the Toxic Substances Control Account for purposes of Section 25354.5.

(B) Chapter 6.85 (commencing with Section 25396).

(C) *Chapter 6.11 (commencing with Section 25404), on and before June 30, 1999.*

~~(C)~~

(D) Article 10 (commencing with Section 7710) of Chapter 1 of Division 4 of the Public Utilities Code, to the extent the department has been delegated responsibilities by the secretary for implementing that article.

(E) *Activities in the department related to pollution prevention and technology development.*

(2) The administration of, *and implementation of programs administered by*, the following units, *and successor organizations of those units*, within the department:

(A) The Human and Ecological Risk Division.

(B) ~~The Hazardous Materials~~ *Environmental Chemistry* Laboratory.

(C) The Office of Pollution Prevention and Technology Development.

(3) For allocation to the Office of Environmental Health Hazard Assessment, pursuant to an interagency agreement, to assist the department as needed in administering the programs described in subparagraphs (A) and (B) of paragraph (1).

1 (4) For allocation to the State Board of Equalization to pay
2 refunds of fees collected pursuant to Section 43054 of the Revenue
3 and Taxation Code.

4 (5) For the state share mandated pursuant to paragraph (3) of
5 subsection (c) of Section 104 of the federal Comprehensive
6 Environmental Response, Compensation, and Liability Act of
7 1980, as amended (42 U.S.C. Sec. 9604(c)(3)).

8 (6) For the purchase by the state, or by a local agency with the
9 prior approval of the director, of hazardous substance response
10 equipment and other preparations for response to a release of
11 hazardous substances. However, all equipment shall be purchased
12 in a cost-effective manner after consideration of the adequacy of
13 existing equipment owned by the state or the local agency, and the
14 availability of equipment owned by private contractors.

15 (7) For payment of all costs of removal and remedial action
16 incurred by the state, or by any local agency with the approval of
17 the director, in response to a release or threatened release of a
18 hazardous substance, to the extent the costs are not reimbursed by
19 the federal Comprehensive Environmental Response,
20 Compensation, and Liability Act of 1980, as amended (42 U.S.C.
21 Sec. 9601 et seq.).

22 (8) For payment of all costs of actions taken pursuant to
23 subdivision (b) of Section 25358.3, to the extent that these costs
24 are not paid by the federal Comprehensive Environmental
25 Response, Compensation, and Liability Act of 1980, as amended
26 (42 U.S.C. Sec. 9601 et seq.).

27 (9) For all costs incurred by the department in cooperation with
28 the Agency for Toxic Substances and Disease Registry established
29 pursuant to subsection (i) of Section 104 of the federal
30 Comprehensive Environmental Response, Compensation, and
31 Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(i)) and
32 all costs of health effects studies undertaken regarding specific
33 sites or specific substances at specific sites. Funds appropriated
34 for this purpose shall not exceed five hundred thousand dollars
35 (\$500,000) in any single fiscal year. However, these actions shall
36 not duplicate reasonably available federal actions and studies.

37 (10) For repayment of the principal of, and interest on, bonds
38 sold pursuant to Article 7.5 (commencing with Section 25385) of
39 Chapter 6.8.

1 (11) For the reasonable and necessary administrative costs and
2 expenses of the Hazardous Substance Cleanup Arbitration Panel
3 created pursuant to Section 25356.2.

4 (12) Direct site remediation costs.

5 (13) For the department's expenses for staff to perform oversight
6 of investigations, characterizations, removals, remediations, or
7 long-term operation and maintenance.

8 (14) For the administration and collection of the fees imposed
9 pursuant to Section 25205.6.

10 (15) For allocation to the office of the Attorney General,
11 pursuant to an interagency agreement or similar mechanism, for
12 the support of the Toxic Substance Enforcement Program in the
13 office of the Attorney General, in carrying out the purposes of
14 Chapter 6.8 (commencing with Section 25300) and Chapter 6.85
15 (commencing with Section 25396).

16 (16) For funding the California Environmental Contaminant
17 Biomonitoring Program established pursuant to Chapter 8
18 (commencing with Section 105440) of Part 5 of Division 103.

19 (c) The funds deposited in the Toxic Substances Control
20 Account may be appropriated by the Legislature to the Office of
21 Environmental Health Hazard Assessment and the State
22 Department of Public Health for the purposes of carrying out their
23 duties pursuant to the California Environmental Contaminant
24 Biomonitoring Program (Chapter 8 (commencing with Section
25 105440) of Part 5 of Division 103).

26 (d) The director shall expend federal funds in the Toxic
27 Substances Control Account consistent with the requirements
28 specified in Section 114 of the federal Comprehensive
29 Environmental Response, Compensation, and Liability Act of
30 1980, as amended (42 U.S.C. Sec. 9614), upon appropriation by
31 the Legislature, for the purposes for which they were provided to
32 the state.

33 (e) Money in the Toxic Substances Control Account shall not
34 be expended to conduct removal or remedial actions if any
35 significant portion of the hazardous substances to be removed or
36 remedied originated from a source outside the state.

37 (f) The Director of Finance, upon request of the director, may
38 make a loan from the General Fund to the Toxic Substances
39 Control Account to meet cash needs. The loan shall be subject to
40 the repayment provisions of Section 16351 of the Government

1 Code and the interest provisions of Section 16314 of the
2 Government Code.

3 (g) The Toxic Substances Control Account established pursuant
4 to subdivision (a) is the successor fund of all of the following:

5 (1) The Hazardous Substance Account established pursuant to
6 Section 25330, as that section read on June 30, 2006.

7 (2) The Hazardous Substance Clearing Account established
8 pursuant to Section 25334, as that section read on June 30, 2006.

9 (3) The Hazardous Substance Cleanup Fund established pursuant
10 to Section 25385.3, as that section read on June 30, 2006.

11 (4) The Superfund Bond Trust Fund established pursuant to
12 Section 25385.8, as that section read on June 30, 2006.

13 (h) On and after July 1, 2006, all assets, liabilities, and surplus
14 of the accounts and funds listed in subdivision (g), shall be
15 transferred to, and become a part of, the Toxic Substances Control
16 Account, as provided by Section 16346 of the Government Code.
17 All existing appropriations from these accounts, to the extent
18 encumbered, shall continue to be available for the same purposes
19 and periods from the Toxic Substances Control Account.

20 (i) The department, on or before February 1 of each year, shall
21 report to the Governor and the Legislature on the prior fiscal year's
22 expenditure of funds within the Toxic Substances Control Account
23 for the purposes specified in subdivision (b).

24 SEC. 2. Section 25187 of the Health and Safety Code is
25 amended to read:

26 25187. (a) (1) The department or a unified program agency,
27 in accordance with subdivision ~~(f)~~ (l), may issue an order requiring
28 that the violation be corrected and imposing an administrative
29 penalty, for ~~any~~ a violation of this chapter or ~~any~~ a permit, rule,
30 regulation, standard, or requirement issued or adopted pursuant to
31 this chapter, whenever the department or Unified Program Agency
32 determines that a person has violated, is in violation of, or
33 threatens, as defined in subdivision (e) of Section 13304 of the
34 Water Code, to violate, this chapter or Chapter 6.8 (commencing
35 with Section 25300), or ~~any~~ a permit, rule, regulation, standard,
36 or requirement issued or adopted pursuant to this chapter or Chapter
37 6.8 (commencing with Section 25300).

38 (2) In an order proposing a penalty pursuant to this section, the
39 department or Unified Program Agency shall take into
40 consideration the nature, circumstances, extent, and gravity of the

1 violation, the violator's past and present efforts to prevent, abate,
2 or clean up conditions posing a threat to the public health or safety
3 or the environment, the violator's ability to pay the proposed
4 penalty, and the prophylactic effect that the imposition of the
5 proposed penalty would have on both the violator and the regulated
6 community as a whole.

7 (b) The department or a unified program agency, in accordance
8 with subdivision ~~(b)~~ (1), may issue an order requiring corrective
9 action whenever the department or Unified Program Agency
10 determines that there is or has been a release, as defined in Chapter
11 6.8 (commencing with Section 25300), of hazardous waste or
12 constituents into the environment from a hazardous waste facility.

13 (1) In the case of a release of hazardous waste or constituents
14 into the environment from a hazardous waste facility that is
15 required to obtain a permit pursuant to Article 9 (commencing
16 with Section 25200), the department shall pursue the remedies
17 available under this chapter, including the issuance of an order for
18 corrective action pursuant to this section, before using the legal
19 remedies available pursuant to Chapter 6.8 (commencing with
20 Section 25300), except in any of the following circumstances:

21 (A) Where the person who is responsible for the release
22 voluntarily requests in writing that the department issue an order
23 to that person to take corrective action pursuant to Chapter 6.8
24 (commencing with Section 25300).

25 (B) Where the person who is responsible for the release is unable
26 to pay for the cost of corrective action to address the release. For
27 purposes of this subparagraph, the inability of a person to pay for
28 the cost of corrective action shall be determined in accordance
29 with the policies of the Environmental Protection Agency for the
30 implementation of Section 9605 of Title 42 of the United States
31 Code.

32 (C) Where the person responsible for the release is unwilling
33 to perform corrective action to address the release. For purposes
34 of this subparagraph, the unwillingness of a person to take
35 corrective action shall be determined in accordance with the
36 policies of the Environmental Protection Agency for the
37 implementation of Section 9605 of Title 42 of the United States
38 Code.

39 (D) Where the release is part of a regional or multisite
40 groundwater contamination problem that cannot, in its entirety,

1 be addressed using the legal remedies available pursuant to this
2 chapter and for which other releases that are part of the regional
3 or multisite groundwater contamination problem are being
4 addressed using the legal remedies available pursuant to Chapter
5 6.8 (commencing with Section 25300).

6 (E) Where an order for corrective action has ~~already~~ been issued
7 against the person responsible for the release, or the department
8 and the person responsible for the release have, prior to January
9 1, 1996, entered into an agreement to address the required cleanup
10 of the release pursuant to Chapter 6.8 (commencing with Section
11 25300).

12 (F) Where the hazardous waste facility is owned or operated by
13 the federal government.

14 (2) The order shall include a requirement that the person take
15 corrective action with respect to the release of hazardous waste or
16 constituents, abate the effects ~~thereof~~, *of the release*, and take any
17 other necessary remedial action.

18 (3) If the order requires corrective action at a hazardous waste
19 facility, the order shall require that corrective action be taken
20 beyond the facility boundary, where necessary to protect human
21 health or the environment.

22 (4) The order shall incorporate, as a condition of the order, any
23 applicable waste discharge requirements issued by the State Water
24 Resources Control Board or a California regional water quality
25 control board, and shall be consistent with all applicable water
26 quality control plans adopted pursuant to Section 13170 of the
27 Water Code and Article 3 (commencing with Section 13240) of
28 Chapter 4 of Division 7 of the Water Code and state policies for
29 water quality control adopted pursuant to Article 3 (commencing
30 with Section 13140) of Chapter 3 of Division 7 of the Water Code
31 existing at the time of the issuance of the order, to the extent that
32 the department or Unified Program Agency determines that those
33 plans and policies are not less stringent than this chapter and
34 regulations adopted pursuant to this chapter. The order may include
35 ~~any~~ *a* more stringent requirement that the department or Unified
36 Program Agency determines is necessary or appropriate to protect
37 water quality.

38 (5) Persons who are subject to an order pursuant to this
39 subdivision include present and prior owners, lessees, or operators
40 of the property where the hazardous waste is located, present or

1 past generators, storers, treaters, transporters, disposers, and
2 handlers of hazardous waste, and persons who arrange, or have
3 arranged, by contract or other agreement, to store, treat, transport,
4 dispose of, or otherwise handle hazardous waste.

5 (6) For purposes of this subdivision, “hazardous waste facility”
6 includes the entire site that is under the control of an owner or
7 operator engaged in the management of hazardous waste.

8 (c) ~~Any~~ An order issued pursuant to this section shall be served
9 by personal service or certified mail and shall inform the person
10 so served of the right to a hearing. If the Unified Program Agency
11 issues the order pursuant to this section, the order shall state
12 whether the hearing procedure specified in paragraph (2) of
13 subdivision (f) may be requested by the person receiving the order.

14 (d) ~~Any~~ A person served with an order pursuant to this section
15 who has been unable to resolve any violation or deficiency on an
16 informal basis with the department or Unified Program Agency
17 may, within 15 days after service of the order, request a hearing
18 pursuant to subdivision (e) or (f) by filing with the department or
19 Unified Program Agency a notice of defense. The notice shall be
20 filed with the office that issued the order. A notice of defense shall
21 be deemed filed within the 15-day period provided by this
22 subdivision if it is postmarked within that 15-day period. If ~~no~~ a
23 notice of defense is *not* filed within the time limits provided by
24 this subdivision, the order shall become final.

25 (e) ~~Any~~ A hearing requested on an order issued by the
26 department shall be conducted within 90 days after receipt of the
27 notice of defense by an administrative law judge of the Office of
28 Administrative Hearings of the Department of General Services
29 in accordance with Chapter 4.5 (commencing with Section 11400)
30 of Part 1 of Division 3 of Title 2 of the Government Code, and the
31 department shall have all the authority granted to an agency by
32 those provisions.

33 (f) Except as provided in subparagraph (B) of paragraph (2), a
34 person requesting a hearing on an order issued by a unified program
35 agency may select the hearing process specified in either paragraph
36 (1) or (2) in the notice of defense filed with the Unified Program
37 Agency pursuant to subdivision (d). Within 90 days of receipt of
38 the notice of defense by the Unified Program Agency, the hearing
39 shall be conducted using one of the following procedures:

1 (1) An administrative law judge of the Office of Administrative
2 Hearings of the Department of General Services shall conduct the
3 hearing in accordance with Chapter 4.5 (commencing with Section
4 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

5 (2) (A) A hearing officer designated by the Unified Program
6 Agency shall conduct the hearing in accordance with Chapter 4.5
7 (commencing with Section 11400) of Part 1 of Division 3 of Title
8 2 of the Government Code, and the Unified Program Agency shall
9 have all the authority granted to an agency by those provisions.
10 When a hearing is conducted by a unified program agency pursuant
11 to this paragraph, the Unified Program Agency shall, within 60
12 days of the hearing, issue a decision.

13 (B) A person requesting a hearing on an order issued by a unified
14 program agency may select the hearing process specified in this
15 paragraph in a notice of defense filed pursuant to subdivision (d)
16 only if the Unified Program Agency has, as of the date the order
17 is issued pursuant to subdivision (c), selected a designated hearing
18 officer and established a program for conducting a hearing in
19 accordance with this paragraph.

20 (g) The hearing decision issued pursuant to subdivision (f) shall
21 be effective and final upon issuance. Copies of the decision shall
22 be served by personal service or by certified mail upon the party
23 served with the order and upon other persons who appeared at the
24 hearing and requested a copy.

25 (h) ~~Any~~ A provision of an order issued under this section, except
26 the imposition of an administrative penalty, shall take effect upon
27 issuance by the department or Unified Program Agency if the
28 department or Unified Program Agency finds that the violation or
29 violations of law associated with that provision may pose an
30 imminent and substantial endangerment to the public health or
31 safety or the environment, and a request for a hearing shall not
32 stay the effect of that provision of the order pending a hearing
33 decision. However, if the department or Unified Program Agency
34 determines that any or all provisions of the order are so related
35 that the public health or safety or the environment can be protected
36 only by immediate compliance with the order as a whole, then the
37 order as a whole, except the imposition of an administrative
38 penalty, shall take effect upon issuance by the department or
39 Unified Program Agency. A request for a hearing shall not stay
40 the effect of the order as a whole pending a hearing decision.

(i) A decision issued pursuant to this section may be reviewed by the court pursuant to Section 11523 of the Government Code. In all proceedings pursuant to this section, the court shall uphold the decision of the department or Unified Program Agency if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(j) *(1)* All administrative penalties collected from actions brought by the department pursuant to this section shall be placed ~~in a separate subaccount in the Toxic Substances Control Account and shall be available only for transfer to the Site Remediation Account or the Expedited Site Remediation Trust Fund and for expenditure by the department~~ upon appropriation by the Legislature for the following purposes:-

(A) For transfer to the Site Remediation Account.

(B) For transfer to the Expedited Site Remediation Trust Fund.

(C) For transfer to the Orphan Share Reimbursement Trust Fund, only for purposes of paying off claims for reimbursement filed by project proponents, as defined in Section 25390.

(D) For transfer to the Pollution Prevention Technology Assistance Grant Fund created pursuant to Section 25244.25.

(E) For the purposes of subparagraph (E) of paragraph (1) of subdivision (b) of Section 25173.6.

(2) Moneys may only be appropriated for the purposes specified in subparagraphs (C) to (E), inclusive, of paragraph (1) if the moneys transferred pursuant to subparagraphs (A) and (B) of paragraph (1) in any year are in excess of the amounts specified in Section 25173.7.

(k) All administrative penalties collected from an action brought by a unified program agency pursuant to this section shall be paid to the Unified Program Agency that imposed the penalty, and shall be deposited into a special account that shall be expended to fund the activities of the Unified Program Agency in enforcing this chapter pursuant to Section 25180.

~~(l)~~

(l) The authority granted under this section to a unified program agency is limited to both of the following:

1 (1) The issuance of orders to impose penalties and to correct
2 violations of the requirements of this chapter and its implementing
3 regulations, only when the violations are violations of requirements
4 applicable to hazardous waste generators and persons operating
5 pursuant to a permit-by-rule, conditional authorization, or
6 conditional exemption, when the violations occur at a unified
7 program facility within the jurisdiction of the CUPA.

8 (2) The issuance of orders to require corrective action when
9 there has been a release of hazardous waste or constituents only
10 when the Unified Program Agency is authorized to do so pursuant
11 to Section 25404.1.

12 (m) The CUPA shall annually submit a summary report to the
13 department on the status of orders issued by the unified program
14 agencies under this section and Section 25187.1.

15 (n) The CUPA shall consult with the district attorney for the
16 county on the development of policies to be followed in exercising
17 the authority delegated pursuant to this section and Section
18 25187.1, as they relate to the authority of unified program agencies
19 to issue orders.

20 (o) The CUPA shall arrange to have appropriate legal
21 representation in administrative hearings that are conducted by an
22 administrative law judge of the Office of Administrative Hearings
23 of the Department of General Services, and when a decision issued
24 pursuant to this section is appealed to the superior court.

25 (p) The department may adopt regulations to implement this
26 section and paragraph (2) of subdivision (a) of Section 25187.1 as
27 they relate to the authority of unified program agencies to issue
28 orders. The regulations shall include, but not be limited to, all of
29 the following requirements:

30 (1) Provisions to ensure coordinated and consistent application
31 of this section and Section 25187.1 when both the department and
32 the Unified Program Agency have or will be issuing orders under
33 one or both of these sections at the same facility.

34 (2) Provisions to ensure that the enforcement authority granted
35 to the unified program agencies will be exercised consistently
36 throughout the state.

37 (3) Minimum training requirements for staff of the Unified
38 Program Agency relative to this section and Section 25187.1.

39 (4) Procedures to be followed by the department to rescind the
40 authority granted to a unified program agency under this section

1 and Section 25187.1, if the department finds that the Unified
2 Program Agency is not exercising that authority in a manner
3 consistent with this chapter and Chapter 6.11 (commencing with
4 Section 25404) and the regulations adopted pursuant thereto.

5 (q) Except for an enforcement action taken pursuant to this
6 chapter or Chapter 6.8 (commencing with Section 25300), this
7 section does not otherwise affect the authority of a local agency
8 to take any action under any other provision of law.

9 SEC. 3. Section 25244.25 is added to the Health and Safety
10 Code, to read:

11 25244.25. (a) The Pollution Prevention Technology Assistance
12 Grant Fund is hereby established in the State Treasury and shall
13 be administered by the director.

14 (b) In addition to other moneys that may be appropriated by the
15 Legislature to the fund, all of the following shall be deposited into
16 the fund:

17 (1) Administrative penalties transferred pursuant to subparagraph
18 (D) of paragraph (1) of subdivision (j) of Section 25187.

19 (2) Interest earned upon the moneys deposited in the fund.

20 (c) (1) Upon appropriation by the Legislature, moneys in the
21 fund may be used by the department to pay for grants to assist
22 small businesses in purchasing pollution prevention equipment
23 and to pay for the department's administrative costs in
24 implementing this section.

25 (2) A small business receiving a grant issued pursuant to
26 paragraph (1) shall not expend the grant money to purchase
27 equipment to comply with an existing local, state, or federal law,
28 rule, regulation, or memorandum of agreement or understanding,
29 or with any other legally binding document.

30 (d) (1) The department may adopt regulations that the
31 department determines are necessary to implement this section.

32 (2) Regulations adopted by the department pursuant to this
33 section shall be adopted as emergency regulations in accordance
34 with Chapter 3.5 (commencing with Section 11340) of Part 1 of
35 Division 3 of Title 2 of the Government Code. The initial adoption,
36 amendment, or repeal of a regulation authorized by this section is
37 deemed to be necessary for the immediate preservation of the
38 public peace, health, and safety, or general welfare, for the purposes
39 of Sections 11346.1 and 11349.6 of the Government Code, and

1 the department is hereby exempted from the requirement that it
2 describe specific facts showing the need for immediate action.

3 (e) For the purposes of this section, the following terms mean
4 the following:

5 (1) “Fund” means the Pollution Prevention Technology
6 Assistance Grant Fund.

7 (2) “Small business” means an independently owned and
8 operated business, that is not dominant in its field of operation,
9 that, together with affiliates, has 100 or fewer employees, and that
10 has average annual gross receipts of ten million dollars
11 (\$10,000,000) or less over the previous three years, or a business
12 that is a manufacturer, as defined in Section 14837 of the
13 Government Code, with 100 or fewer employees.

14 SEC. 4. Section 25390 of the Health and Safety Code is
15 amended to read:

16 25390. For purposes of this article, the following definitions
17 shall apply:

18 (a) “Fund” means the Orphan Share Reimbursement Trust Fund
19 established pursuant to Section 25390.3.

20 (b) “Orphan share” means the share of liability for the costs of
21 response action that is attributable to the activities of persons who
22 are defunct or insolvent, as determined pursuant to Section 25390.5.

23 (c) “*Project proponent*” means a person who applies to the
24 department for approval to conduct the response to a release or
25 threatened release of hazardous substances. “*Project proponent*”
26 does not include a responsible party.

27 (d) “*Responsible party*” has the same meaning as set forth in
28 Section 25323.5.

29 SEC. 5. Section 25390.1 of the Health and Safety Code is
30 amended to read:

31 25390.1. The Legislature finds and declares all of the following:

32 (a) This article, which establishes an Orphan Share
33 Reimbursement Trust Fund, operates in conjunction with the
34 federal liability scheme under the federal act as in effect on July
35 1, 1998, for the recovery of response costs expended by
36 government agencies.

37 (b) Under federal liability, at sites where there are insolvent or
38 defunct parties that cannot contribute to the cost of cleanup, viable
39 responsible parties pay the share of liability for that cleanup that
40 may be attributable to insolvent and defunct parties.

1 (c) The Orphan Share Reimbursement Trust Fund is created to
2 mitigate the payment of an insolvent or defunct party's liability
3 share by viable responsible parties *or project proponents*, to the
4 extent money in the fund is available, and to encourage responsible
5 parties *or project proponents* to quickly and efficiently remediate
6 contamination.

7 SEC. 6. Section 25390.3 of the Health and Safety Code is
8 amended to read:

9 25390.3. (a) The Orphan Share Reimbursement Trust Fund is
10 hereby created in the State Treasury.

11 (b) The administrator of the fund may expend the money
12 deposited in the fund as provided in this article, upon appropriation
13 by the Legislature. The administrator of the fund shall act in a
14 fiduciary capacity, shall prudently administer the fund, and shall
15 protect the fund from any unreasonable or unjustified claims,
16 including any unreasonable or unjustified determinations of the
17 orphan share percentage.

18 (c) Except as provided in ~~subdivision (d)~~ *subdivisions (d) and*
19 *(e) of this section*, and subdivision (b) of Section 25358.7.2, the
20 administrator of the fund may expend the money in the fund for
21 all of the following purposes:

22 (1) To pay claims for reimbursement of all, or any part of, the
23 orphan share at a site paid by the responsible party *or a project*
24 *proponent* filed pursuant to Section 25390.4.

25 (2) For the costs of implementing this article.

26 (3) To pay the reasonable costs of the department and the
27 regional board for performance of its duties under this article,
28 including, but not limited to, its participation in the orphan share
29 determination process set forth in Section 25390.5, unless those
30 costs are paid by a potentially responsible party *or a project*
31 *proponent* under an agreement specified in paragraph (3) of
32 subdivision (a) of Section 25390.4. The expenditures from the
33 fund for purposes of this paragraph shall not exceed 5 percent of
34 the total amount appropriated from the fund in the annual Budget
35 Act for purposes of this subdivision for that fiscal year.

36 (4) To pay the portion of costs attributable to the orphan share
37 incurred by the department and the regional boards to oversee
38 actions of potentially responsible parties *or project proponents*,
39 unless those costs are paid by a potentially responsible party *or a*

1 *project proponent* under an agreement specified in paragraph (3)
2 of subdivision (a) of Section 25390.4.

3 (d) If an appropriation from the General Fund is made to the
4 fund in any fiscal year and an amount greater than five million
5 dollars (\$5,000,000) in unexpended funds, beyond any amount
6 approved by the administrator of the fund to pay claims pursuant
7 to this article from that General Fund appropriation, remain in the
8 fund at the end of that fiscal year, and if the department determines
9 that additional funding for orphan sites beyond that appropriated
10 from the Toxic Substances Control Account is required for the
11 next fiscal year, the administrator may expend the amount in excess
12 of five million dollars (\$5,000,000) from the General Fund
13 appropriation to pay for response costs incurred by the department
14 or the regional boards under this chapter at sites listed pursuant to
15 Section 25356 where no viable responsible parties exist.

16 (e) *If a transfer is made pursuant to subparagraph (C) of*
17 *paragraph (1) of subdivision (j) of Section 25187, the administrator*
18 *of the fund may expend the moneys transferred only for the*
19 *purposes of paying claims for reimbursement pursuant to*
20 *paragraph (1) of subdivision (c) filed by project proponents.*

21 SEC. 7. Section 25390.4 of the Health and Safety Code is
22 amended to read:

23 25390.4. (a) A potentially responsible party *or a project*
24 *proponent* may file a claim pursuant to paragraph (1) of subdivision
25 (c) of Section 25390.3 only if all of the following apply:

26 (1) The site is listed pursuant to Section 25356.

27 (2) The department or the regional board has approved a final
28 remedy for the site under Section 25356.1.

29 (3) The department and the potentially responsible party *or the*
30 *project proponent* have entered into *either* a written, enforceable
31 cleanup agreement *or an* order embodied in a consent order issued
32 pursuant to Section 25355.5 or 25358.3, or the regional board and
33 the potentially responsible party *or the project proponent* have
34 entered into *either* a written, enforceable cleanup agreement *or an*
35 order that provides for the completion of all response actions
36 necessary at the site, conducted pursuant to this chapter and under
37 the oversight and at the direction of the department or the regional
38 board. The agreement shall provide for the payment by the
39 potentially responsible party *or the project proponent* of the
40 department's or the regional board's response costs.

1 (4) The potentially responsible party *or project proponent*
2 demonstrates, and the department or the regional board finds, that
3 the potentially responsible party *or project proponent* has and will
4 have sufficient financial resources to complete all required response
5 actions.

6 (5) The potentially responsible party *or the project proponent*
7 is in compliance with the agreement provided in paragraph (3),
8 and with any other applicable order or agreement pertaining to the
9 potentially responsible party's *or the project proponent's*
10 obligations with respect to the site.

11 (6) The potentially responsible party *or project proponent* has
12 prepared and provided the information required under subdivision
13 (b) of Section 25390.5.

14 (7) The claim for reimbursement is for the costs incurred for
15 response actions that were subject to the oversight and approval
16 of the department or the regional board.

17 (b) The administrator of the fund shall prescribe appropriate
18 application forms and procedures for claims filed pursuant to
19 paragraph (1) of subdivision (c) of Section 25390.3 that shall
20 include all of the following:

21 (1) Requirements that the claimant provide, at a minimum, all
22 of the following documentation:

23 (A) A sworn verification of the claim to the best of the
24 information known to the claimant or within the claimant's
25 possession or control.

26 (B) All records and information pertaining to the site and
27 relevant to the ownership, operation, or control of the site, or to
28 the ownership, possession, generation, treatment, transportation,
29 storage or disposal of a hazardous substance, pollutant, or
30 contaminant at or in connection with the site, within the possession
31 or control of the claimant, including, but not limited to, the
32 information specified in subdivision (b) of Section 25358.1.

33 (C) Certification of all response costs that have been, or will
34 be, incurred at the site by the potentially responsible party *or the*
35 *project proponent*, and an estimate of the total cost of completion
36 of the approved final remedy at the site.

37 (2) Procedures specifying that claims shall be filed only at the
38 two following specific time periods during the performance of a
39 response action:

40 (A) After the final remedy is selected under Section 25356.1.

1 (B) After the department or the regional board determines that
2 the response action is complete. The department or the regional
3 board shall not include operation and maintenance activities in
4 determining whether the response action is complete under this
5 subparagraph.

6 (c) The administrator of the fund shall annually, on a fiscal year
7 basis, pay claims for reimbursement from the fund filed by
8 potentially responsible parties *and project proponents* under
9 paragraph (1) of subdivision (c) of Section 25390.3, in accordance
10 with the following procedures:

11 (1) Claims for funds available during each fiscal year shall be
12 filed with the administrator by July 30 of that fiscal year.

13 (2) For sites with multiple responsible parties *or project*
14 *proponents*, all potentially responsible parties *and project*
15 *proponents* that have entered into the cleanup agreement specified
16 in paragraph (3) of subdivision (a) of Section 25390.4 shall file a
17 single claim.

18 (3) (A) The administrator shall allocate the money available in
19 the fund for the fiscal year among the claims filed by the July 30
20 deadline. The allocation shall be based on the determination of the
21 orphan share percentage at the facility under the process set forth
22 in Section 25390.5, the long-term financial stability and short-term
23 resources available in the fund, and the administrator's fiduciary
24 duty with respect to the fund. Except as provided in subparagraph
25 (B), the administrator shall pay claims for funds in the order in
26 which they are received.

27 (B) Notwithstanding subparagraph (A), if an appropriation from
28 the General Fund is made to the fund in any fiscal year, the
29 administrator may alter the order of payment of claims required
30 by subparagraph (A) by using funds appropriated from the General
31 Fund to pay claims based on the threat to public health or the
32 environment posed by a site or the need to improve economic and
33 environmental conditions in redeveloping communities.

34 (4) The total amount allocated to any one site shall not exceed
35 10 percent of the total amount available each fiscal year in the
36 fund. If, due to this limit or to the unavailability of funds, a
37 claimant receives only partial or no reimbursement of the orphan
38 share paid by that claimant, the claim shall be paid in the following
39 fiscal year and shall be given priority over all claims filed after

1 the claim was initially received, subject to the discretion of the
2 administrator set forth in paragraph (3).

3 (5) The administrator's proposed allocation shall be subject to
4 public review and comment for 30 days.

5 (d) The state and the fund have no obligation to provide full
6 reimbursement to a claimant. The fund shall be allocated at the
7 discretion of the administrator, subject to the requirements of this
8 article. In enacting this article, the Legislature intends that
9 claimants be reimbursed only to the extent that money is available
10 in the fund and is allocated to the claimant by the administrator.